Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 71-305

EDWARD J. KAZUBOWSKI,

Petitioner,

vs.

HAROLD T. JOHNSON, as Sheriff of Henry County, Illinois,
LOY E. RAY, Sheriff of Henry County, Illinois,
WILLIAM J. SCOTT, Attorney General of the State of Illinois,
RICHARD B. OGILVIE, Governor of the State of Illinois,

Respondents.

MOTION FOR LEAVE TO FILE PETITION AND PETITION FOR A WRIT OF HABEAS CORPUS AND FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

EDWARD J. KAZUBOWSKI
133 E. Division Street
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Now comes the petitioner and respectfully moves this Court for leave to file the annexed petition for a writ of habeas corpus and for a writ of certiorari to review the orders and judgments of the United States Court of Appeals for the Seventh Circuit, entered on August 18, 1971, and more particularly described in the petition, and for such other and further relief as may be just and proper.

It is noted that 28 U.S.C., §2403 may be applicable.

Respectfully submitted,

/s/ EDWARD J. KAZUBOWSKI
133 E. Division Street
Kewanee, Illinois 61443
Petitioner Pro Se

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PETITION FOR A WRIT OF HABEAS CORPUS AND FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

To: *Mr. Justice Marshall, Associate Justice of the Supreme Court of the United States and Circuit Justice For the Seventh Circuit, and to the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:*

The petition of Edward J. Kazubowski respectfully shows:

Petitioner is a citizen of the United States and a resident of the City of Kewanee, County of Henry and State of Illinois. Petitioner is a dentist with his office located in the City of Kewanee, Henry County, Illinois.

Respondent Harold T. Johnson is the former Sheriff of Henry County, Illinois.

Respondent Loy E. Ray is a former Deputy Sheriff of Henry County, Illinos, and is presently the Sheriff of Henry County, Illinois, who was sworn in office on December 7, 1970, succeeding respondent Harold T. Johnson, as Sheriff.

Petitioner is now actually, unjustly and unlawfully imprisoned and restrained of his liberty and detained under color of the authority of the State of Illinois, in the custody of respondent Loy E. Ray, Sheriff of Henry County, Cambridge, Illinois, in violation of the Fourth, Fifth, Sixth, Eighth, Thirteenth and Fourteenth Amendments to the Constitution of the United States, and in violation of Article VI, Clause 2 of the National Constitution, and makes application for a writ of habeas corpus and for a writ of certiorari to the United States Court of Appeals For the Seventh Circuit to review the orders and judgments of said Court of Appeals entered August 18, 1971.

The sole claim and authority by virtue of which petitioner is restrained and confined of his liberty is by the tampering with the administration of justice and the obstructing of justice by the issuance of a fictitious search warrant issued for the person of petitioner, at the address of the home of petitioner, on June 26, 1970, known to have been fictitious when served upon petitioner by respondent Harold T. Johnson, on June 26, 1970, but nonetheless, served by said respondent Sheriff for pur-

poses to extort $28,000.00 from the members of petitioner's family to purchase the liberty of petitioner, pursuant to a calculated, well planned scheme, having its inception on August 31, 1966.

SEARCH WARRANT ISSUED FOR THE PERSON OF PETITIONER AND COMPLAINT UPON WHICH SEARCH WARRANT ISSUED.

The search warrant issued on June 26, 1970, for the person of petitioner, at the address of the home of petitioner, is attached to this petition as Appendix A, *infra,* pp. 1a-3a.

The complaint for search warrant for the person of petitioner, signed by Respondent Harold T. Johnson, as Sheriff of Henry County, Illinois, on June 26, 1970, is attached to this petition as Appendix B, *infra,* pp. 3a-4a.

OPINIONS BELOW.

The Order entered July 3, 1970, for the original writ of habeas corpus to issue in the Illinois Supreme Court, is attached to this petition as Appendix C, *infra,* pp. 4a-5a.

The Order entered October 6, 1970, by the Illinois Supreme Court in the original habeas corpus proceedings in the Illinois Supreme Court, denying petitioner's motion to quash or vacate search warrant issued for the person of petitioner, at the address of petitioner's home, and denying petitioner a complete discharge from the custody of respondent Sheriff, without any findings of fact, is attached to this petition as Appendix D, *infra,* pp. 5a-7a.

The opinion entered by the Illinois Supreme Court on May 21, 1971, in the original habeas corpus proceedings in said Court, is not as yet reported. A copy of the opinion is attached to this petition as Appendix E, *infra,* pp. 7a-11a.

The order entered by Judge Robert D. Morgan, of the United States District Court For the Southern District of Illinois, Northern Division, on July 2, 1971, denying petitioner's application for a writ of habeas corpus and for declaratory judgment, without a hearing, and dismissing petition and complaint with prejudice, is attached to this petition as Appendix F, *infra,* pp. 12a-13a.

The order, or notation, entered by said Judge Robert D. Morgan of the United States District Court For the Southern District of Illinois, Northern Division, on July 13, 1971, denying petitioner a certificate of probable cause on appeal from denial of a writ of habeas corpus, is attached to this petition as Appendix G, *infra,* p. 14a.

The order entered August 18, 1971, by the United States Court of Appeals For the Seventh Circuit, denying petitioner a certificate of probable cause on appeal from denial of a writ of habeas corpus, and dismissing the appeal for lack of a certificate of probable cause for appeal, and denying petitioner's application for release pending appeal, is attached to this petition as Appendix H, *infra,* pp. 15a-16a.

JURISDICTION TO REVIEW.

Jurisdiction is grounded on Title 28 U.S.C. Sections 2241(a) (c) (3) (5), 2243, 2251, 2253; Title 28 U.S.C. Sections 1651(a), 2101(f), 2201, 2202 and 2283, and the Constitution of the United States, more particularly Ar-

ticle VI, Clause 2 of the United States Constitution and Amendments 4, 5, 6, 8, 13 and Section 1 of Amendment 14 thereto.

Acts of Constitutionality of Congress affecting the public interest and the institutions set up to protect and safeguard the public, is invoked under Title 28 U.S.C., Section 2403.

Application for writ of federal habeas corpus and for declaratory judgment was made in the United States District Court For the Southern District of Illinois, Northern Division, on July 2, 1971, denied July 2, 1971, without a hearing and without any findings of fact on the application presented by an Order Dismissing Petition and Complaint With Prejudice.

Jurisdiction in the said District Court was invoked under Title 28 U.S.C. Sections 2241 (a) (c) (3) (5), 2242, 2243, 2251, 2254 and Title 28 U.S.C. Sections 2201 and 2202, Article VI, Clause 2 of the United States Constitution and Amendments 4, 5, 6, 8, 13 and Section 1 of Amendment 14 thereto.

The special, unusual and unprecedented circumstances invoking this Court's jurisdiction to issue the writs for habeas corpus and certiorari as requested in this petition are set forth later under the heading "Reasons For Granting the Writs" (*infra,* pp. 18-28).

CONSTITUTIONAL PROVISIONS.

United States Constitution:

Article VI, Clause 2 is printed in Appendix I, *infra*, p. 16a.

Amendments 4, 5, 6, 8, 13 and Section 1 of Amendment 14, are printed in Appendix I, *infra*, pp. 16a-17a.

Illinois Constitution of 1870:

Article II, Section 6 is printed in Appendix I, *infra*, pp. 17a-18a.

Article VI, Section 5 is printed in Appendix I, *infra*, p. 18a.

STATUTES INVOLVED.

United States Statutes:

Title 28 U.S.C. § 2241 (a) (c) (3) (5) are printed in Appendix J, *infra*, p. 18a.

Title 28 U.S.C. § 2243 is printed in Appendix J, *infra*, pp. 18a-19a.

Title 28 U.S.C. § 2251 is printed in Appendix J, *infra*, p. 19a.

Title 28 U.S.C. § 2253 is printed in Appendix J, *infra*, p. 20a.

Title 28 U.S.C. § 2201 is printed in Appendix J, *infra*, p. 20a.

Title 28 U.S.C. § 2202 is printed in Appendix J, *infra*, p. 20a.

Illinois Statutes:

Illinois Revised Statutes (1969):

Chap. 38, Sec. 108-3 is printed in Appendix J, *infra*, pp. 20a-21a.

Chap. 38, Sec. 108-7 is printed in Appendix J, *infra*, p. 21a.

Chap. 38, Sec. 108-10 is printed in Appendix J, *infra*, p. 21a.

Chap. 38, Sec. 109-1 is printed in Appendix J, *infra*, pp. 21a-22a.

Chap. 38, Sec. 109-3 is printed in Appendix J, *infra*, pp. 22a-23a.

Chap. 38, Sec. 111-3 is printed in Appendix J, *infra*, p. 23a.

Chap. 65, Sec. 1 is printed in Appendix J, *infra*, p. 23a.

Chap. 65, Sec. 2 is printed in Appendix J, *infra*, p. 24a.

STATEMENT UNDER RULE 33(2).

Since the proceedings draw into question the Constitutionality of the Acts of Congress, Title 18 U.S.C., Sections 241 and 242 (Civil Rights, Conspiracy against rights of citizens and Deprivation of right under color of Law (June 25, 1968, c. 645, 62 Stat. 696; Apr. 11, 1968, Pub. L. 90-284, Title 1, Sections 103 (a) (b), 82 Stat. 75) and Section 371 of Title 18 U.S.C. (Conspiracy to commit offense or to defraud United States) (June 25, 1948, c. 645, 62 Stat. 701) are drawn in question in this petition, affecting the public interest and the institutions set up to protect and safeguard the public, and Amendments 4, 5, 6, 8, 13 and Section 1 of Amendment 14 to the Constitution of the United States, and Article VI, Clause 2 of the Constitution of the United States are drawn in question in this petition, affecting the public interest, and the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated with the good order of society, and neither the United States nor any agency, officer or employee thereof, is a party, it is noted that 28 U.S.C. Section 2403 may be applicable.

STATEMENT OF THE CASE.

On June 26, 1970, respondent Harold T. Johnson, two deputy sheriffs, the Chief of Police of the City of Kewanee, Henry County, Illinois, and two other police officers, using a crow-bar on a rear door of petitioner's home, broke the lock off the door, gained entrance into a foyer, damaged and removed a lock from an inner door, damaging the door and door trim, gained entrance into petitioner's home, searched the premises, served petitioner with a search warrant issued for the person of petitioner, at the address of the home of petitioner, seized and searched petitioner, handcuffed petitioner, and put petitioner into one of the Sheriff's cars and took petitioner to the County Jail. Immediately upon arrival at the common jail of Henry County, Cambridge, Illinois, petitioner was imprisoned in a small, filthy, smelly cell.

The search warrant for the person of petitioner, at the address of petitioner's home, had been issued on June 26, 1970 by Judge Dan H. McNeal of the Circuit Court of Henry County, Fourteenth Judicial Circuit of Illinois.

Respondent Harold T. Johnson refused to inform petitioner of the charge of the offense committed for which the search warrant issued, and a refusal to inform petitioner of the complainant.

No hearing was afforded to petitioner on June 26, 1970, nor at any other time upon the search warrant issued for the person of petitioner, or upon the complaint upon which the search warrant issued, nor has petitioner been charged with any offense for which the search warrant issued.

The complaint upon which the search warrant issued was suppressed and concealed for more than 7 days from the attorney for petitioner.

By a prior order entered in the Circuit Court of Henry County, Illinois, the Clerk of said Circuit Court was enjoined from filing any documents, papers or pleadings of petitioner, unless pertaining to appeals.

On June 29, 1970, a petition for original writ of habeas corpus on behalf of petitioner, with copy of the search warrant attached thereto, was docketed and presented to Justice Thomas E. Kluczynski of the Illinois Supreme Court, who refused to take any action on said petition on June 29, 1970.

On June 30, 1970, the Clerk of said Circuit Court issued an attachment writ in Case No. 65-D-1240 in said Circuit Court, entitled "Betty Dolar Kazubowski, vs. Edward J. Kazubowski", commanding respondent Sheriff to take petitioner into custody and to keep petitioner safely until Thursday, July 2, 1970, and to have petitioner in said Circuit Court to answer unto the People of the State of Illinois for a contempt of court against the State of Illinois. A copy of the attachment writ was left between the bars of the cell door for petitioner on the afternoon of June 30, 1970, by respondent Harold T. Johnson.

No notice of any hearing was given to the attorney for petitioner.

On July 2, 1970, petitioner was "yanked" out of his cell by respondents Sheriff Harold T. Johnson and Loy E. Ray, taken to the Circuit Court of Henry County, Illinois, sentenced to sixty (60) days imprisonment in the common jail of Henry County, Illinois, by a Judge Richard Stengel, for "wilful and contumacious refusal" to pay the sum of $14,852.00 to Betty Dolar, also known as Betty

Dolar Kazubowski, and to her attorneys, alleged due and owing in Case No. 65-D-1240 in said Circuit Court.

The order entered July 2, 1970, further provided the "period of sixty days, to be served consecutively after the previous sentences for contempt now in force in this cause". The "previous sentences for contempt now in force in this cause" were not made known to petitioner.

On July 3, 1970, a second and supplementary petition for original writ of habeas corpus was filed and presented to Justice Kluczynski of the Illinois Supreme Court.

On July 3, 1970, an order was entered by four Justices of the Illinois Supreme Court for the original writ of habeas corpus to issue, petitioner to be released upon giving personal recognizance bond in the amount of $5,000.00, production of the body waived, and respondent Sheriff Harold T. Johnson ordered to file answer on or before July 13, 1970.

Thereafter, the complaint upon which the search warrant issued was then filed, and shown filed as of July 1, 1970. The complaint was signed by respondent Harold T. Johnson, as Sheriff, supported by:

"A Reliable Informant, Betty Dolar Kazubowski".

The Return Upon Writ of Habeas Corpus by respondent Sheriff did not certify to the true cause of the breaking into and entering of the home of petitioner, nor to the illegal search of the premises, nor to the true cause of the illegal search, seizure and arrest of petitioner, but attached thereto a series of mittimuses for commitments for contempts of court entered in Case No. 65-D-1240, falsely reciting service upon petitioner on date of June 26, 1970, and attached thereto an opinion rendered in *Kazubowski* v. *Kazubowski*, 93 Ill. App. 2d 126 (1968)

and an opinion rendered in *Kazubowski* v. *Kazubowski*, 45 Ill. 2d 405, 259 N.E. 2d 282 (1970).

On October 6, 1970, the Illinois Supreme Court entered an order refusing to quash or vacate the search warrant issued for the person of petitioner, at the address of petitioner's home, and denied petitioner a complete discharge from custody of respondent Sheriff, without any findings of fact.

Thereafter, petitioner's attorney received a falsified copy of the record in the original habeas corpus proceedings in the Illinois Supreme Court, certified to by the Clerk of said Court on date of October 30, 1970. The petition for original writ of habeas corpus, with copy of the fictitious search warrant issued for the person of petitioner attached thereto, docketed and presented to Justice Kluczynski on June 29, 1970 had been entirely omitted from said certified record, and the second and supplementary petition for original writ of habeas corpus, filed and presented July 3, 1970, had been substituted therefore, by deleting the words "second and supplementary" therefrom, so that both petitions appear to be the same in context and content, to completely suppress and conceal the fictitious search warrant issued June 26. 1970.

On November 18, 1970, application for writ of habeas corpus was filed in the United States District Court For the Southern District of Illinois, Northern Division, denied without a hearing and without any findings of fact by Judge Robert D. Morgan on November 18, 1970. Application for issuance of a certificate of probable cause was denied by said Judge Morgan on November 23, 1970. Notice of appeal to the United States Court of Appeals For the Seventh Circuit was filed November 27, 1970 in said District Court.

On November 30, 1970, a short record and certified copy of docket entries, together with application for issuance of a certificate of probable cause on appeal from denial of a writ of habeas corpus, was filed in said Court of Appeals.

On December 1, 1970, Chief Judge Luther M. Swygert entered an order directing counsel for respondent Harold T. Johnson, Sheriff of Henry County, Illinois. to answer said application on or before December 12, 1970.

To prevent invoking of federal jurisdiction, the Illinois Supreme Court, on December 3, 1970, then entered an announcement:

> "The issues are closed on the petition and supplementary petition for writ of habeas corpus, return and answer. Brief of petitioner to be filed on or before January 7, 1971; brief of respondent, on or before February 11, 1971, and reply brief, if any, on or before February 25, 1971."

On December 9, 1970, petitioner received three (3) printed copies of Brief of Respondent Harold T. Johnson, with copy of motion for leave to file Brief instanter, and with copy of service of brief upon petitioner.

On December 17, 1970, said Court of Appeals denied petitioner's application without any findings of fact, irrespective of the fact respondent Harold T. Johnson did not comply with the order entered December 1, 1970 by Chief Judge Luther M. Swygert.

On December 21, 1970, an order was entered by the Illinois Supreme Court allowing motion of respondent Loy E. Ray to be substituted as respondent for Harold T. Johnson in the original habeas corpus proceedings in the Illinois Supreme Court.

On January 13, 1971, petitioner filed motion for leave to file and petition for a writ of habeas corpus and cer-

tiorari and for other relief in this Court, being Case No. 6448, October Term, 1970, denied March 22, 1971.

On May 21, 1971, the Illinois Supreme Court rendered an opinion on the brief of respondent Sheriff filed December 9, 1970, but without any findings of fact and without any mention of the search warrant and without mention of the complaint upon which the search warrant issued, and without mention of the search of the premises, the search, seizure, arrest and imprisonment of petitioner which followed pursuant thereto.

The opinion rendered fraudulently misrepresents the proceedings in the trial court and in the Illinois Supreme Court, and placed an inexcusable construction upon known, void, illegal orders to serve as accomplices in an unlawful conspiracy and fraud to extort the approximate sum of $28,000.00 from the members of petitioner's family to purchase the liberty of petitioner. By the opinion rendered petitioner was ordered remanded to the custody of respondent Sheriff Loy E. Ray, to "serve the sentences of the court".

On June 29, 1971, the Clerk of the Circuit Court of Henry County, Illinois, issued two mittimuses: one for sixty (60) days commitment "to be served consecutively after the other sentences of commitments now in force", as recited in the order entered July 2, 1970, and another for six (6) months commitment under an order recited to have been entered May 7, 1969, for alimony, plus interest, allegedly due and owing Betty Dolar in Case No. 65-D-1240 in said Circuit Court, having for its basis a known void, illegal order obtained September 23, 1966, by a divorced spouse, and in violation of, and contrary to the Divorce Statute of Illinois, in violation of, and contrary to public policy and morals, and in violation of, and contrary to the statutes pertaining to supersedeas

and stay of proceedings, pending an appeal in 1966 from an order not affecting the marital relation of the parties.

On June 29, 1971, respondent Sheriff Loy E. Ray, four deputy sheriffs and the Chief of Police of the City of Kewanee, Illinois, appeared at the dental office of petitioner, took petitioner into custody to serve void, illegal sentences of eight (8) months, unless $28,000.00 paid to said Betty Dolar Kazubowski, "the reliable informant," for whom respondent Harold T. Johnson signed the complaint for search warrant for the person of petitioner on June 26, 1970.

On July 2, 1971, application for a writ of habeas corpus and for declaratory judgment was filed on behalf of petitioner in the United States District Court For the Southern District of Illinois, Northern Division, denied without a hearing by Judge Robert D. Morgan on July 2, 1971, and without any findings of fact.

Thereafter, on July 2, 1971, attorney for petitioner filed Notice of Appeal to the United States Court of Appeals For the Seventh Circuit.

Thereafter, attorney for petitioner proceeded to Chicago, Illinois, to the Court of Appeals to file a true and correct copy of the application for writ of habeas corpus and for declaratory judgment, a certified copy of the Order Dismissing Petition and Complaint With Prejudice, entered theretofore by Judge Morgan and a certified copy of docket entries. Upon payment of the docket fees, attorney for petitioner filed an emergency motion for leave to file petition for release of petitioner pending appeal and a petition for release pending appeal. Notice was given to respondents.

On July 7, 1971, the Court of Appeals allowed the motion and denied the petition.

On July 7, 1971, the Clerk of the District Court certified and transmitted the record to the Clerk of the Court of Appeals.

On July 8, 1971, application for issuance of a certificate of probable cause on appeal from denial of a writ of habeas corpus was forwarded the Clerk of said District Court, denied July 13, 1971 by said Judge Morgan. Another letter received by attorney for petitioner thereafter, from the Clerk of said District Court stated the application, with order thereon, was forwarded to the Clerk of the Court of Appeals.

On July 15, 1971, attorney for petitioner, to protect the interests of petitioner re-filed notice of appeal from that portion of the order denying certificate of probable cause on appeal from denial of a writ of habeas corpus and re-paid filing fees. Said notice of appeal was filed in said District Court on July 19, 1971.

From July 8, 1971 to July 23, 1971, it was unknown which Clerk of which Court had the supplemental record because the Clerk of the District Court stated in a letter he had certified and transmitted the record to the Clerk of the Court of Appeals while the Clerk of said Court of Appeals denied having said record, and the docket entries did not reflect any record except that as certified and transmitted on July 7, 1971 by the Clerk of the District Court, shown filed July 8, 1971 in said Court of Appeals.

The order denying petitioner's application for issuance of a certificate of probable cause was by notation upon said application, and a certified copy thereof was not forwarded to the attorney as requested, nor available to the attorney.

The record was certified and transmitted by the Clerk of the District Court without an order granting or de-

nying a certificate of probable cause as required by Rule 22(b) of the Federal Rules of Appellate Procedure.

On July 29, 1971, the record and supplemental records of said District Court was complete in the Court of Appeals to proceed on appeal, by attorney for petitioner obtaining personally a certified copy of the docket entries from the Clerk of said District Court on July 26, 1971, who theretofore would not forward any docket entries to the Clerk of the Court of Appeals.

On July 29, 1971 petitioner's application for issuance of a certificate of probable cause on appeal from denial of a writ of habeas corpus was filed in said Court of Appeals. Application for release pending the appeal was also filed July 29, 1971 in said Court of Appeals. On July 29, 1971, Notice of Existence of Constitutional Questions As To Acts of Congress, pursuant to Rule 44 of the Federal Rules of Appellate Procedure, was also filed in said Court of Appeals.

To protect the interests of petitioner, and on July 29, 1971, attorney for petitioner obtained certain certified copies of the records in said cause from the Clerk of the Court of Appeals, and with a Certified copy of the Notice of appeal filed July 19, 1971 in said District Court, and with certified copy of the order Dismissing petition and Complaint With Prejudice, and with certified copy of the docket entries of the District Court, together with a motion to consolidate said cause with Case No. 71-1487 pending in said court of Appeals, and with notice of filing said motion to consolidate cases, with affidavit of service upon respondents and upon tender of docket fees, said clerk of the Court of Appeals refused to docket said case.

On July 29, 1971, the Clerk of said Court of Appeals issued a Certificate of Constitutional Question In Case Where the United States is Not a Party, giving notice

to the attorney for petitioner, and to one Francis T. Crowe, 130 North Wells, Rm. 1700, Chicago, Illinois, as counsel for respondents-appellees, and which address is not the address of the Attorney General of the State of Illinois.

On July 31, 1971, petitioner's attorney forwarded Objections To Omissions in the Certificate of Constitutional Question In Case Where the United States Is Not A Party, as prepared by the Clerk of said Court of Appeals, in that said Clerk omitted mention that the Acts of Congress drawn in question in this appeal, affect the public and the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated with the good order of society, and omitted mention of the tampering with the administration of justice, to obstruct, hinder and defeat the due course of justice, involved in the appeal, which affect the public and the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society, filed in said Court of Appeals August 2, 1971.

On August 16, 1971, petitioner forwarded his application to this Court for a stay of 8 months commitments for contempts of court and for issuance of a certificate of probable cause to proceed on appeal, denied August 24, 1971.

On August 18, 1971, the said Court of Appeals entered an order denying petitioner's application for issuance of a certificate of probable cause without any findings of fact, and dismissed the appeal for lack of certificate of probable cause, and denied petitioner's application for release pending appeal, and denied the Motion To Consolidate Cases.

REASONS FOR GRANTING THE WRITS.

1.

THE SEARCH WARRANT ISSUED BY JUDGE McNEAL WAS CONSTITUTIONALLY INVALID BECAUSE THE COMPLAINT UPON WHICH IT WAS ISSUED DID NOT STATE ANY FACTS OF PROBABLE CAUSE, NOR CHARGE PETITIONER WITH AN OFFENSE COMMITTED, NOR DESCRIBE THE THINGS TO BE SEIZED, BUT WAS KNOWN TO HAVE BEEN FICTITIOUS WHEN ISSUED AND WHEN SERVED UPON PETITIONER, AND IS IN CONFLICT WITH THE DECISIONS OF SAID COURT OF APPEALS AND WITH THE DECISIONS OF THIS COURT.

The complaint or affidavit supporting the search warrant must contain not only a statement of some factual reason for the complainant's belief in the reliability of his informant, but also, and most important in the facts of this case, the factual basis upon which the reliable informant r:sts. *Aguilar* v. *Texas*, 378 U.S. 108, 114-115. The decision in *Aguilar* v. *Texas* was intended to insure an independent determination of probable cause by a magistrate.

In *Spinelli* v. *United States*, 393 U.S. 410, at page 416, this Court thought it desirable to explicate the principles of *Aguilar*, and said:

> "Applying these principles to the present case, we first consider the weight to be given the informer's tip when it is considered apart from the rest of the affidavit. It is clear that a Commissioner could not credit it without abdicating his constitutional function. Though the affidavit swore that his confident was 'reliable' he offered the magistrate no reason in support of this conclusion."

The "fatal flaw" of the complaint of respondent Sheriff is that the complaint for issuance of a search war-

rant for the person of petitioner, at the address of petitioner's home, is *totally devoid of any facts of probable cause,* and *totally devoid of any charge of an offense committed.*

Of particular importance in the instant case is the provision of the Fourth Amendment that warrants must describe the "things to be seized" with sufficient particularity. This fundamental requirement is simply lacking in the issuance of the search warrant by Judge McNeal.

The complaint for search warrant for the person of petitioner was insufficient and constitutionally invalid to justify its issuance, searches and seizures made pursuant thereto, and was unreasonable, unlawful and in violation of petitioner's Fourth and Fourteenth Amendment Constitutional rights, and in conflict with the decisions of said Court of Appeals, and with the decisions of this Court. *Aguilar* v. *Texas,* 378 U.S. 108; *Spinelli* v. *United States,* 393 U.S. 410; *United States* v. *Ventresca,* 380 U.S. 102; *United States* v. *Davis,* 402 F. 2d 171 (C.A. 7th Cir.) (1968); *United States* v. *Mirallegro,* 387 F. 2d 895 (C.A. 7th Cir.) (1967).

The search warrant is invalid and cannot support or justify the breaking and entering by the Sheriff, his deputies, and police officers into the private dwelling place of a citizen, in view of the Constitutional command of the Fourth Amendment that:

> "(N)o warrants shall issue, but upon probable cause, supported by Oath or affirmation . . ."

2.

THE FICTITIOUS SEARCH WARRANT ISSUED FOR THE PERSON OF PETITIONER, THE SEARCH OF THE PREMISES, THE ARREST, SEARCH AND SEIZURE OF PETITIONER'S PERSON WERE NOT MADE IN GOOD FAITH, NOR WITH THE EXPECTATION OF SECURING A VALID CONVICTION, BUT RATHER IS A PART OF THE CALCULATED, WELL PLANNED SCHEME TO EMPLOY ARRESTS, HARASSMENT, IMPRISONMENT, RESTRAINT AND CONFINEMENT OF PETITIONER'S LIBERTY TO EXTORT MONEY AND TO DEPRIVE PETITIONER OF CONTROL AND SOLE OWNERSHIP OF HIS REAL ESTATE, AND TO DEPRIVE PETITIONER OF HIS PROFESSIONAL PRACTICE OF DENTISTRY AND MEANS OF LIVELIHOOD.

The grounds for search warrant are provided for by statute in Illinois (Ill. Rev. Stat. 1969, Ch. 38, sec. 108-3). The complaint signed by respondent Sheriff, for the issuance of a search warrant does not comply with the Illinois Criminal Code. The search warrant does not comply with the command of a search warrant, nor with the rights of petitioner upon arrest on search warrant, nor with preliminary examination, nor with proceedings upon arrest to be taken without unnecessary delay before the judge who issued the warrant and to inform petitioner of the charge against him and to provide him with a copy of the charge, admit petitioner to bail or in accord with the provisions of the Illinois Criminal Code or to discharge petitioner (Ill. Rev. Stat. 1969, Ch. 38, sections 108-7, 108-10, 109-1, 109-3), nor is there a charge of an offense as required by the Illinois Criminal Code (Ill. Rev. Stat. 1969, Ch. 38, sec. 111-3), nor does the search warrant describe the "things to be seized" as required by Section 6 of Article II of the Illinois Constitution of 1870, and as required by the Fourth Amendment to the Constitution of the United States.

Petitioner has been deprived of liberty and property without due process of law, in violation of the Fifth

Amendment to the United States Constitution, denied the right to a speedy and public trial, denied and refused to be informed of the nature and cause of the accusation and to be confronted with the witnesses against him, in violation of the Sixth Amendment; the sum of $28,000.00 for the purchase of petitioner's liberty is cruel and unusual punishment inflicted, in violation of Amendment Eight, and petitioner is serving involuntary servitude, in violation of Amendment Thirteen, and petitioner has been, and continues to be, deprived of liberty and property, without due process of law, and has been, and continues to be denied the equal protection of the laws, in violation of Section 1 of Amendment Fourteen to the Constitution of the United States, by the Illinois Supreme Court serving as accomplices in the persistent and wilful transgressions of the Supremacy Clause of the United States Constitution.

The State cannot justify the illegal and unreasonable breaking and entering into petitioner's home, the illegal and unreasonable searches, seizure and arrest of petitioner by the illegal and fictitious search warrant issued for the person of petitioner, nor justify the searches and seizure by the arrest, *Johnson* v. *United States,* 333 U.S. 10, 16, and does not attempt to do so, but simply ignores mention of the search warrant, and the complaint upon which the search warrant issued, pursuant to the calculated, well planned scheme to extort money and to confiscate property.

The opinion rendered May 21, 1971, frauduently misrepresents the truth of the proceedings, the truth of petitioner's imprisonment on June 26, 1970, to place an inexcusable construction upon void, illegal, adverse orders, known to have been entered contrary to, and in direct violation of the Divorce Statute of Illinois, contrary to, and in direct violation of public policy and morals, and

in direct violation of, and contrary to the statutes and laws pertaining to supersedeas and stay of proceedings pending an appeal taken in 1966, in Case No. 65-D-1240 in the Circuit Court of Henry County, Illinois, which did not affect the marital relation of the parties in Case No. 65-D-1240 in said Circuit Court, because the "reliable informant", Betty Dolar, also known as Betty Dolar Kazubowski, had been awarded a final decree of divorce by Judge Dan H. McNeal on June 13, 1966, in said Case No. 65-D-1240 in said Circuit Court.

This Court can take judicial notice of Cases No. 1783, re-numbered 70-239; Case No. 1866; and Case No. 71-90 presently pending in this Court, and in addition, another Case has more recently been forwarded August 18, 1971, to the Clerk of this Court for docketing, entitled: "Edward J. Kazubowski, Clarence W. Boling, Helen L. Boling, Margaret Gilio, Petitioners, vs. Betty Dolar, also known as Betty Dolar Kazubowski, Robert C. Underwood, Chief Justice of the Illinois Supreme Court, Joseph H. Goldenhersh, Justice of the Illinois Supreme Court, Daniel P. Ward, Justice of the Illinois Supreme Court and Chairman of the Illinois Courts Commission, Respondents".

3.

THE DENIAL AND REFUSAL OF THE COURT OF APPEALS TO ISSUE A CERTIFICATE OF PROBABLE CAUSE TO PROCEED ON APPEAL AND THE DISMISSAL OF THE APPEAL FOR LACK OF A CERTIFICATE OF PROBABLE CAUSE, IS TO EVADE AND DEFEAT PETITIONER'S CLAIMS OF VIOLATIONS OF FEDERAL CONSTITUTIONAL RIGHTS, AND MORE PARTICULARLY THE FOURTH AND FOURTEENTH AMENDMENT RIGHTS.

Article VI, Clause 2 of the United States Constitution requires the State Courts equally with the Federal Courts to guard, enforce and protect every right granted or secured by the Constitution of the United States and the

laws made in pursuance thereof, whenever those rights are involved in any suit or proceeding before them. *Robb* v. *Connolly,* 111 U.S. 624, 637.

In *Lee* v. *Florida,* 392 U.S. 378, 386, this Court said:

> ". . . Under our Constitution no court, state or federal may serve as an accomplice in the wilful transgression of 'the Laws of the United States,' Laws by which 'the Judges in every State (are) bound . . .'"

It is not disputed no hearing was afforded petitioner upon the search warrant issued for the person of petitioner in the Circuit Court of Henry County, Illinois. It is not disputed no hearings are afforded in original habeas corpus proceedings in the Illinois Supreme Court. It is not disputed no hearings were afforded petitioner on the federal habeas corpus proceedings twice presented and denied by Judge Robert D. Morgan in said District Court, on the basis of *res judicata* of the orders affirmed or omitted from mention in the opinions theretofore rendered by the Illinois reviewing courts.

The order entered July 2, 1971 by Judge Morgan Dismissing Petition and Complaint With Prejudice, was *res judicata* upon matters outside the contents alleged in the application for writ of habeas corpus and for declaratory judgment.

In *Fay* v. *Noia,* 372 U.S. 391, 423, this Court said:

> "It is of the historical essence of habeas corpus that it lies to test proceedings so fundamentally lawless that imprisonment pursuant to them is not merely erroneous but void. Hence, the familiar principle that *res judicata* is inapplicable in habeas proceedings.
>
> "When there is actual interference with the due course of justice, there is a departure of due process of law . . . and if the State Courts failed to correct the wrong . . . perfection in the machinery for correction cannot prevent this Court from securing to

petitioner his constitutional rights." *Fay* v. *Noia*, 372 U.S. 391, 421.

Enforced delay from lack of a remedy over a period of more than one year in the original habeas corpus proceedings commenced in the Illinois Supreme Court is, itself, a decided detriment to petitioner. Petitioner was forced to serve 8 days before the original writ of habeas corpus was issued by the Illinois Supreme Court on July 3, 1970, and has been subjected to more than 8 weeks unlawful imprisonment of the 8 months consecutive sentences imposed since remanded to the custody of respondent Sheriff on June 29, 1971.

4.

IN HABEAS CORPUS PROCEEDINGS INSTITUTED BY A PRISONER UNDER STATE PROCESS, A FEDERAL DISTRICT COURT MUST HOLD AN EVIDENTIARY HEARING IF THE APPLICANT DID NOT RECEIVE A FULL AND FAIR EVIDENTIARY HEARING IN A STATE COURT.

In *Townsend* v. *Sain*, 372 U.S. 293, at page 313, this Court sets forth six specific circumstances under which a federal court must grant an evidentiary hearing to a habeas applicant. In applying the specific circumstances to petitioner's habeas application, the lower federal courts denied petitioner all opportunity to an evidentiary hearing, without any findings of fact and without mention of the search warrant issued, and without mention of the complaint upon which the search warrant issued, to defeat and evade petitioner's federal Constitutional rights to an evidentiary hearing which would have released petitioner from the burdens imposed upon him and from the unlawful restraint of his liberty and free him of the harassment employed to extort money from the members of petitioner's family to purchase his freedom. An evidentiary hearing would have afforded petitioner an opportunity for declaratory judgment including, *inter*

alia, the vacating of known void, illegal orders, claims, liens, judgments, acts and proceedings taken in repeated and intentional violation and defiance of $50,000 supersedeas bonds in Case No. 65-D-1240 in said Circuit Court of Henry County, Illinois, while at all times preventing and prohibiting petitioner from vacating the void illegal orders, claims, liens and judgments.

The primary purpose of a habeas corpus proceeding is to make certain that a man is not unjustly imprisoned. *Townsend* v. *Sain,* 372 U.S. 293, 317.

Title 28 U.S.C. Section 2243 required the District Court to grant the writ and to hold a hearing and to "dispose of the matter as law and justice require".

A prisoner serving consecutive sentences is "in custody" for purposes of Title 28 U.S.C. Section 2241 (c)(3). *Peyton* v. *Rowe,* 391 U.S. 54, 67.

If the State withholds effective remedy, as in the instant case, the federal courts have the power and the duty to provide it. This Court in *Fay* v. *Noia,* 372 U.S. 391, at page 441 said:

> ". . . (W)e have consistently held that federal court jurisdiction is conferred by the allegation of an unconstitutional restraint and is not defeated by anything that may occur in the state proceedings. State procedural rules plainly must yield to this overriding federal policy. . . . A fortiori, due process denied in the proceedings leading to conviction is not restored just because the state court declines to adjudicate the claimed denial on the merits."

Petitioner has not been tried or convicted under the search warrant, but is unlawfully, unjustly restrained and confined of his liberty.

The habeas corpus jurisdiction of the lower federal courts is not the judgment of a state court *but detention simpliciter.*

5.

THE ABUSE OF DISCRETION BY THE LOWER FEDERAL COURTS ARE SO AGGRAVATED AND THE ABSENCE OF OTHER ADEQUATE REMEDY SO APPARENT AS TO INDUCE THIS COURT TO GRANT THE WRIT OF HABEAS CORPUS AND WRIT OF CERTIORARI, OR TO SUMMARILY REVERSE THE UNCONSTITUTIONALLY IMPOSED SENTENCES FOR PURPOSE OF EXTORTION OF $28,000.00 AND A PRESENT ADJUDICATION THAT PETITIONER CANNOT BE HELD FOR ACTUAL SERVICE OF THE SENTENCES.

The application for issuance of a certificate of probable cause was properly before the Court of Appeals on substantial allegations of illegal restraint and confinement of petitioner's liberty by the tampering with the administration of justice to defeat, hinder and obstruct justice in the State courts to extort $28,000.00 by oppressive tactics and improprieties of constitutional magnitude, conclusively prejudicial and damaging to petitioner.

The denial to issue a certificate of probable cause and the dismissal of the appeal for lack of a certificate of probable cause to proceed on appeal, were not in good faith, nor to guard, enforce and protect every right granted or secured in a federal habeas proceedings, but rather to lessen the probability of review by this Court and to prolong the litigation, without a determination of petitioner's claims of violations of federal Constitutional rights and unlawful restraint of liberty, and to have petitioner serve part, if not all of the illegal and void sentences before there can be a review of the merits of petitioner's contentions of violations of the Fourth, Fifth, Sixth, Eighth, Thirteenth and Fourteenth Amendment Constitutional rights.

This Court has insistently said that the power of the federal courts to conduct inquiry in habeas corpus is equal to the responsibility which the writ involves: "The language of Congress, the history of the writ, the decisions of this Court, all make clear that the power of inquiry on federal habeas corpus is plenary". *Harris* v. *Nelson,* 394 U.S. 286, 292; *Townsend* v. *Sain,* 372 U.S. 293, 312.

6.

THE WRIT OF HABEAS CORPUS IS THE FUNDAMENTAL INSTRUMENT FOR SAFEGUARDING INDIVIDUAL FREEDOM AGAINST ARBITRARY AND LAWLESS STATE ACTION.

The pre-eminent role of the writ of habeas corpus is recognized by the admonition in the Constitution that: "The Privilege of the Writ of Habeas Corpus shall not be suspended . . ." U. S. Const., Art. 1, § 9, cl. 2.

The function of the writ of habeas corpus has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints. In *Fay* v. *Noia,* 372 U.S. 391, 430-431, this Court said:

> "But while our appellate function is concerned only with the judgments or decrees of state courts, the habeas corpus jurisdiction of the lower federal courts is not so confined. The jurisdictional prerequisite is not the judgment of a state court but detention simpliciter. . . . And the broad power of the federal courts under 28 U.S.C. § 2243 summarily to hear the application and to 'determine the facts, and dispose of the matter as law and justice require', is hardly characteristic of an appellate jurisdiction. Habeas corpus lies to enforce the right of personal liberty; when that right is denied and a person confined, the federal court has the power to release him. Indeed, it has no other power; it cannot revise the state court judgment; it can act only on the body of the petitioner . . ."

The exceptional, unusual and unprecedented circumstances presented in the lower federal courts, and the persistent refusal to afford petitioner relief from the unlawful restraint of his liberty by virtue of the fictitious search warrant, have been sanctioned with such a departure from the applicable decisions of the said Court of Appeals and the applicable decisions of this Court to warrant the exercise of this Court's supervisory powers, and to warrant the immediate release and discharge of petitioner.

The unlawful imprisonment cannot be shown to conform with the fundamental requirements of law and petitioner is entitled to his immediate discharge.

The illegal sentences of 8 months consecutive sentences are the "fruits" or "objects" of the fictitious search warrant and may be described as "come by the exploitation of the illegality." *Wong Sun* v. *United States,* 317 U.S. 471, 488.

PRAYER FOR RELIEF.

WHEREFORE, petitioner prays this Court to issue its writ of habeas corpus addressed to Loy E. Ray, Sheriff of Henry County, Cambridge, Illinois, ordering and directing him to release the body of petitioner forthwith and that petitioner be discharged from further custody, and that the sentences and any and all matters involved in the habeas corpus proceeding be stayed, and prays that if bond is required, this Court set petitioner's personal recognizance bond in a reasonable amount, as petitioner has heretofore been ordered to give, and has given and had approved, $50,000 supersedeas bonds, increased to $90,000 supersedeas bonds upon seizure and confisca-

tion of the money and property of the sureties on the $50,000 supersedeas bonds, in addition to seizures and confiscation of the checking and savings accounts of sureties on said supersedeas bonds, and judgment liens on the real estate of petitioner and judgment lien upon the real estate of the sureties on said supersedeas bonds, by the "reliable informant" Betty Dolar, for whom respondent Sheriff signed the fictitious complaint for search warrant, and for whom respondent Sheriff served a known fictitious search warrant upon petitioner, and prays the orders of the said Court of Appeals be reversed or the cause remanded to said District Court for an evidentiary hearing on the petition for writ of habeas corpus and for declaratory judgment, or in the alternative, that the illegal sentences imposed under the fictitious search warrant, and the void, illegal orders obtained by the "fruits" of the fictitious search warrant be summarily reversed, petitioner released and the cause remanded to said District Court for hearing on the declaratory judgment, and that respondents herein, their attorneys, agents or successors in office, together with the "reliable informant", Betty Dolar Kazubowski, also known as Betty Dolar, be enjoined from enforcing any order, lien, claim, judgment or proceeding in Case No. 65-D-1240 in the Circuit Court of Henry County, Illinois, entitled: "Betty Dolar Kazubowski, vs. Edward J. Kazubowski", and from enforcing any order, lien, claim, judgment or proceedings arising out of, and as a direct result of Case No. 65-D-1240 in said Circuit Court against the sureties on the supersedeas bond, and from enforcing any order, lien, claim, judgment or proceedings arising out of the $20,000 additional bond filed as ordered to be given by petitioner, and approved on October 24, 1968 in the Illinois Appellate Court, Third District, Case No. 66-101, entitled: "Betty Dolar Kazubowski, appellee, vs. Edward J. Kazubowski, appellant", and, petitioner prays for such other and further order,

or orders, as to this Court seem just and meet in the premises.

Respectfully submitted,

/s/ Edward J. Kazubowski
133 E. Division Street
Kewanee, Illinois 61443
Petitioner Pro Se

STATE OF ILLINOIS
COUNTY OF HENRY—SS.

EDWARD J. KAZUBOWSKI, being first duly sworn deposes and says he is the petitioner above named; that he has read the foregoing petition by him subscribed and knows the contents thereof and that the matters and things stated therein are true in substance and in fact.

/s/ Edward J. Kazubowski

Subscribed and sworn to before me
this 27th day of August, 1971.

/s/ Louise M. Ouart (Seal)

My Comm. Expires: Feb. 26, 1974.

APPENDIX A

[Filed July 1, 1970]

State Of Illinois

In The Circuit Court Of The Fourteenth Judicial Circuit

Henry County

BETTY DOLAR KAZUBOWSKI

Plaintiff

vs.

EDWARD J. KAZUBOWSKI

Defendant

SEARCH WARRANT

To All Peace Officers Of The State Of Illinois or .....
....., On This Day Harold T. Johnson, Complainant, Has Subscribed and sworn to a complaint for search warrant before me. Upon examination of the complaint I find that it states facts sufficient to show probable cause and I therefore command that the premises of 133 E. Division Street, Kewanee, Illinois be searched and the following Person, Edward J. Kazubowski be seized therefrom:

.....

I further command that a return of anyone so seized shall be made without unnecessary delay before me or before Judge Dan H. McNeal or before any court of competent jurisdiction.

/s/ Dan H. McNeal
Judge

Date of Issuance June 26, 1970
Time of Issuance .....

Sheriff's Fees
Service - $4.00
Mileage - 6.40
Return - 3.00

$13.40

RETURNED NOT EXECUTED

I did not execute this warrant within 96 hours from the time of issuance and it is hereby returned to the court as void and not executed.

.....
Officer

Date Returned .....19.....
Time Returned .....

filed July 1 - 1970
Dean Leander, Clerk of Circuit Court
By Dean Leander, Deputy

State Of Illinois
County Of Henry—ss.

I executed the within warrant by tendering a copy of the warrant to Anna Kazubowski Phelps at the within described premises, and by taking the person listed on an instrument entitled Inventory attached hereto and made a part hereof from the within described premises described on the attached warrant this 26th day of June 1970, at 2:45 P.M., and I have this day brought into Court before Honorable Richard Stengel, Circuit Judge, the said person listed on said Inventory.
Service and mileage: $.....

/s/ Harold T. Johnson
Peace Officer.

filed July 1 - 1970
Dean Leander, Clerk of Circuit Court
By Dean Leander, Deputy

INVENTORY OF ARTICLES SEIZED UNDER SEARCH WARRANT

I, Harold T. Johnson, being first duly sworn, upon oath depose and say that pursuant to the authority contained in the within search warrant, I did on the 26th day of June, A.D. 1970, seize and take possession of the following person:

Edward J. Kazubowski .....

.....

/s/ Harold T. Johnson

Subscribed and sworn to before me this 30th day of June, A.D. 1970.

/s/ Betty M. Brown
Notary Public

filed July 1 - 1970
Dean Leander, Clerk of Circuit Court
By Dean Leander, Deputy

APPENDIX B

[Filed July 1, 1970]

State Of Illinois

In The Circuit Court Of The Fourteenth Judicial Circuit
Henry County

COMPLAINT FOR SEARCH WARRANT

Harold T. Johnson, complainant, now appears before the undersigned Judge of the Circuit Court of said County and requests the issuance of a search warrant to search the premises of 133 E. Division Street, Kewanee, Illinois and seize the following person,

Edward J. Kazubowski

Complainant says that he has probable cause to believe, based upon the following facts, that the above listed person to be seized is now located upon the premises set forth above:

1. A Reliable Informant, Betty Dolar Kazubowski.

.....

/s/ Harold T. Johnson
Complainant

Subscribed and sworn to before me on June 26, 1970.

/s/ Dan H. McNeal
Judge

filed July 1 - 1970
Dean Leander, Clerk of Circuit Court
By Dean Leander, Deputy

APPENDIX C

In The
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS
EX REL EDWARD J. KAZUBOWSKI

Relator

vs.

HAROLD T. JOHNSON, Sheriff of
Henry County, Illinois

Respondent

ORDER

This cause coming on to be heard on the motion by petitioner for leave to file a petition for an original writ of habeas corpus, and upon petitioner's subsequent motion

to file an additional and supplemental petition for an original writ of habeas corpus, and the Court being fully advised of and concerning the premises;

It Is Hereby Ordered that the motions by petitioner for leave to file these petitions for an original writ of habeas corpus be and the same are hereby consolidated and allowed.

It Is Further Ordered that the writ shall issue directed to Harold T. Johnson, Sheriff of Henry County, Illinois. Answer to be filed on or before July 13, 1970. Production of the body is ordered waived.

It Is Further Ordered that petitioner Edward J. Kazubowski be released from the custody of the Sheriff upon his personal recognizance in the sum of Five Thousand ($5,000.00) Dollars conditioned according to law and until further order of this Court.

Enter:
/s/ Thomas E. Kluczynski
/s/ Walter V. Schaefer (per TEK)
/s/ Caswell J. Crebs (per TEK)
/s/ Marvin F. Burt (per TEK)
by oral authority granted

Dated: July 3, 1970

APPENDIX D

United States of America

State of Illinois
Supreme Court--ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the fourteenth day of September

in the year of our Lord, one thousand nine hundred and seventy, within and for the State of Illinois.

Present: Robert C. Underwood, Chief Justice

Justice Walter V. Schaefer Justice Thomas E. Kluczynski
Justice Daniel P. Ward Justice John T. Culbertson, Jr.
Justice Caswell J. Crebs Justice Marvin F. Burt
William J. Scott, Attorney General
Robert G. Miley, Marshal
Attest: Justin Taft, Clerk

BE IT REMEMBERED, that, to-wit: on the 6th day of October, A.D. 1970, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

PEOPLE EX REL. EDWARD J. KAZUBOWSKI. *Petitioner*		
No. 43368	vs.	Habeas Corpus
HAROLD T. JOHNSON, Sheriff of Henry County, Illinois, *Respondent*		

And now, on this day, the Court having duly considered the motion by petitioner to quash or vacate search warrant and that an order be entered for complete discharge of petitioner, and being fully advised of and concerning the premises;

It Is Hereby Ordered that the motion by petitioner to quash or vacate search warrant and that an order be entered for complete discharge of petitioner be, and the same is, denied.

I, Justin Taft, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal

thereof, do hereby certify that the foregoing is a true copy of an order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 30th day of October, A.D. 1970.

/s/ Justin Taft
Clerk, Supreme Court of the State of Illinois.

APPENDIX E

[Filed May 21, 1971]

Docket No. 43368—Agenda 21—March, 1971.
THE PEOPLE *ex rel.* EDWARD J. KAZUBOWSKI, Petitioner, *vs.* LOY E. RAY, Sheriff, Respondent.

Mr. JUSTICE DAVIS delivered the opinion of the court:

The petitioner, Edward J. Kazubowski, filed a petition for a writ of *habeas corpus* in this court, seeking his release from the custody of Harold T. Johnson, Sheriff of Henry County, where he had been confined in the Henry County jail as a result of contempt citations. Subsequently, he filed a second or supplemental petition, requesting the same relief. A writ was issued, pending a hearing before this court, releasing the petitioner from the sheriff's custody. A return to the writ was filed by the respondent, and the petitioner filed an answer to the return. This matter comes before the court on this record.

The petitioner had been in the custody of the respondent under three separate orders of commitment for contempt of court entered by the circuit court of the 14th Judicial Circuit, Henry County. All three orders arose out

of a divorce proceeding in which the petitioner was the defendant. In *Kazubowski* v. *Kazubowski,* 93 Ill. App. 2d 126, the decree for divorce, the property settlement decree, and orders finding the petitioner in contempt for failure to pay alimony and attorney's fees were sustained. We denied a petition for leave to appeal from the judgment of the appellate court (39 Ill. 2d 625), and the United States Supreme Court denied a petition for writ of *certiorari,* 393 U.S. 1117, 22 L. Ed. 2d 122, 89 S. Ct. 993.

Subsequently, the defendant filed three separate and direct appeals to this court wherein he alleged that the effect of the orders of the trial court, entered after his unsuccessful appeal and the decision of the appellate court, was to deprive him of his constitutional rights. Those appeals were consolidated for hearing, and all final orders appealed from were affirmed by this court in *Kazubowski* v. *Kazubowski,* 45 Ill. 2d 405. The facts of the proceedings below were fully stated in this decision and need not be restated here.

The petitioner was committed, pursuant to three orders of the circuit court: one dated May 2, 1969, which this court has found to be valid (45 Ill. 2d 405, 416, 417); an earlier unappealed order dated October 7, 1966; and a third order dated July 2, 1970, which was entered by the trial court subsequent to the aforementioned appeals, from which no appeal was taken. The unappealed orders must be presumed to be valid.

In seeking a writ of *habeas corpus,* the petitioner questions the jurisdiction of the trial court to enter two of the three orders holding him in contempt. He construes the contempt citations to be criminal rather than civil and challenges the two orders in that they fail to meet

the requirements of due process in a criminal contempt proceeding. Criminal contempt is conduct which is directed against the dignity and authority of the court or a judge acting judicially, while civil contempt ordinarily consists of failing to do something ordered to be done by a court in a civil action for the benefit of the opposing litigant therein. (*People ex rel. Chicago Bar Association* v. *Barasch,* 21 Ill. 2d 407, 409; *People* v. *Gholson,* 412 Ill. 294, 298.) These contempt actions arose out of a divorce proceeding, and were brought by the plaintiff in that proceeding for the purpose of collecting unpaid alimony, attorney's fees, and interest; they were not punitive in nature, but rather, were prosecuted to enforce the rights of the plaintiff in the divorce proceeding—the collection of money due under valid orders of the court; and they are civil in nature and, thus, are not subject to the due-process requirements of indirect criminal contempt proceedings.

In construing these contempt proceedings as criminal in nature, the petitioner twice filed his special and limited appearance to the rules to show cause which the court had issued prior to the entry of the contempt findings. He refused to offer any testimony at the hearings on the contempt citations, choosing instead to stand on his challenge to the jurisdiction of the court to hold him in contempt. By so doing, he apparently sought to preserve for review the question of whether these are, in fact, indirect criminal contempts.

The petitioner is in error in his contention for three reasons. First, he originally consented to the general jurisdiction of the court over his person as well as over the subject matter of the divorce when he entered his general appearance in the original divorce proceeding and sought and obtained a jury trial. In *Martin* v. *Chicago*

and Milwaukee Electric R.R. Co., 220 Ill. 97, at page 99 this court said: "There can be no question as to the jurisdiction of the person of the appellant Martin, for the reason that he made a motion for a separate jury trial without limiting his appearance, which brought him personally before the court for all the purposes of this proceeding. The fact that he *afterwards*, as the record shows, entered a special appearance and moved the court to dismiss the petition, and *afterwards* filed the so-called plea to the jurisdiction, does not deprive the court of the jurisdiction to his person acquired by his general appearance theretofore entered in moving for a separate jury trial." By entering his general appearance and contesting the divorce action, the petitioner submitted to the jurisdiction of the court to enter orders against him. *Lord* v. *Hubert*, 12 Ill. 2d 83, 86, 87.

Secondly, the civil contempt proceedings of which the petitioner complains were brought to enforce the final orders of the court entered with respect to alimony, attorney's fees and interest. These proceedings were logical extensions of the original divorce proceeding and the jurisdiction invoked to make the divorce and property settlement decrees effective extends to any subsequent proceedings taken to enforce such final decrees. (*Leman* v. *Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 454, 76 L. Ed. 389, 52 S. Ct. 238.) Under this view, only an appropriate notice of the respective contempt proceedings was required, and the petitioner received such notice.

Under analogous circumstances, the United States Supreme Court in *Leman* held that additional proceedings to cite a defendant for civil contempt are not to be construed "as an original complaint but as a continuation of the proceeding already begun." Also, in 17 Am. Jur.

2d 44, it is stated that: "The fact that a divorce decree has become final does not deprive the court of power to enforce an order for the payment of costs, and attorneys' fees by contempt proceedings."

Thirdly, the petitioner is in error because he actually seeks to review the divorce orders by means of the extraordinary remedy of *habeas corpus,* rather than by appeal. The writ of *habeas corpus* may not be used to perform the functions of an appeal, and it is only where the judgment of commitment is void—not merely erroneous—that a discharge should be granted. *People ex rel. Merrill* v. *Hazard,* 361 Ill. 60, 63.

The petitioner unsuccessfully exhausted his remedies as to the commitment order of May 2, 1969, and never appealed the commitment orders of October 7, 1966, or July 2, 1970. The decrees and contempt orders entered by the circuit court below are all valid and enforceable. The decrees and orders from which the petitioner seeks relief have either been adjudicated adversely to him on review or no appeal was taken therefrom, and he cannot use the writ of *habeas corpus* to obtain either a review or an additional review thereof.

The writ is quashed and the petitioner is remanded to the custody of the sheriff of Henry County, to serve the sentence of the court, or until released by due process of law.

Writ quashed and petitioner remanded.

Mr. JUSTICE WARD took no part in the consideration or decision of this case.

APPENDIX F

In The United States District Court
Southern District Of Illinois
Northern Division

[Filed July 2, 1971]

In the Matter of the Application of EDWARD J. KAZUBOWSKI for a Writ of Habeas Corpus and for Declaratory Judgment,

EDWARD J. KAZUBOWSKI,

Petitioner,

vs.

HAROLD T. JOHNSON, as Sheriff of Henry County, Illinois, LOY E. RAY, Sheriff of Henry County, Illinois, WILLIAM J. SCOTT, Attorney General of the State of Illinois, and RICHARD B. OGILVIE, Governor of the State of Illinois,

Respondents.

Civil Action

No. P-3269

ORDER DISMISSING PETITION AND COMPLAINT WITH PREJUDICE

Upon reading the petition and complaint herein, immediately upon the filing thereof at the request of counsel for petitioner, and consideration of same, together with the pertinent exhibits attached thereto, it is apparent that the relief prayed must be denied and that said petition must be dismissed with prejudice.

It is apparent that the whole substance of petitioner's assertions of alleged wrongs done to him by the named respondents and others arise out of a 1966 divorce decree which has become final and with which he does not choose to comply. His basic allegations have had consideration of this court, through its Chief Judge in Case No. P-3028, which was a suit for injunction and damages and which

was terminated by Final Order and Judgment against him on May 20, 1969.

A prior petition for habeas corpus, with 55 exhibits attached, was denied by the undersigned judge on November 18, 1970, in Case No. P-3206, and applications for Certificate of Probable Cause for Appeal were denied by the undersigned and by the Court of Appeals for the Seventh Circuit.

The matter has been considered by the courts of Illinois before and since prior proceedings in this court, including full discussion in opinion handed down by the Supreme Court of Illinois on May 21, 1971, which led to remand of petitioner to the custody of the Sheriff of Henry County, Illinois, which custody is here complained of. The only basis of complaint is alleged corruption, fraud, concealment, etc. by judges and justices of the Illinois courts and other public officials, which are wholly contradicted by a clear showing of due process of law made by the attached exhibits. Plaintiff's counsel simply disagrees with all the courts which have considered the matter on the applicable law, or desires to relitigate matters which are wholly immaterial to the reason for petitioner's present confinement.

The petition and complaint herein, with exhibits, demonstrates that there is no basis for any of the relief prayed in the Federal Constitution or statutes, and it is hereby dismissed with prejudice at plaintiff's cost.

/s/ Robert D. Morgan
United States District Judge

Entered: July 2, 1971
A True Copy
Attest:
/s/ William J. Littell, Clerk
U. S. District Court
Southern Dist. of Ill.
Date: July 26, 1971

APPENDIX G

United States District Court
Office Of The Clerk
Southern District of Illinois

William J. Littell
Clerk

Peoria, Illinois 61601
July 13, 1971

Anna A. Phelps
Attorney at Law
133 E. Division Street
Kewanee, Illinois 61443

Re: KAZUBOWSKI

-vs- No. P-3269

JOHNSON, ET AL.

Madam:

This is to acknowledge receipt of the Application for issuance of a Certificate of Probable Cause in the above-entitled case, which was filed today.

Judge Morgan entered the following Order on said Application:

> "Certificate of probable cause denied because no new matter raised. This alleged wrongful detention has been fully considered by state and federal courts and has been found a valid exercise of the state courts' authority to enforce its decree."

Very truly yours,

/s/ William J. Littell, Clerk

ldb

APPENDIX H

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604
Wednesday, August 18, 1971.

Before
Hon. LUTHER M. SWYGERT, *Chief Judge*
Hon. THOMAS E. FAIRCHILD, *Circuit Judge*
Hon. ROBERT A. SPRECHER, *Circuit Judge*

EDWARD J. KAZUBOWSKI,
Petitioner-Appellant,

No. 71-1487 vs.

HAROLD J. JOHNSON, as Sheriff of Henry County, Illinois, et al.,
Respondents-Appellees.

Appeal from the United States District Court for the Southern District of Illinois, Northern Division.

It Is Ordered by the Court that the application of counsel for petitioner-appellant, Edward J. Kazubowski, for the release of petitioner-appellant pending appeal be and the same is hereby denied.

It Is Further Ordered by the Court that the application of counsel for petitioner-appellant for the issuance of a certificate or probable cause for appeal from the order of the United States District Court for the Southern District of Illinois, Northern Division, denying petition for writ of habeas corpus be and the same is hereby denied.

It Is Further Ordered by the Court that the motion of counsel for petitioner-appellant to consolidate this appeal with an appeal from an order of the district court

for the Southern District of Illinois, Northern Division, denying a certificate of probable cause for appeal be and the same is hereby denied.

It Is Further Ordered And Adjudged by this Court that this appeal from an order of the United States District Court for the Southern District of Illinois, Northern Division, be and the same is hereby dismissed with costs on the Court's own motion, for lack of a certificate of probable cause for appeal.

APPENDIX I

CONSTITUTIONAL PROVISIONS INVOLVED
United States Constitution

Article VI, Clause 2:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Amendment 4:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment 5:

> ". . . nor shall any person . . . be deprived of life, liberty, or property, without due process of law. . . ."

Amendment 6:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment 8:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

Amendment 13:

"Section 1: Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Amendment 14, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Illinois Constitution of 1870

Article II, Section 6. Searches and seizures:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue without probable cause, sup-

ported by affidavit, particularly describing the place to be searched, and the persons or things to be seized."

Article VI, Section 5. Jurisdiction:

The Supreme Court may exercise original jurisdiction in cases relating to the revenue, mandamus, prohibition and habeas corpus, such original jurisdiction as may be necessary to the complete determination of any cause on review, and only appellate jurisdiction in all other cases.

APPENDIX J

STATUTES INVOLVED

United States Statutes

28 U.S.C. §2241. Power to grant writ:

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

(c) The writ of habeas corpus shall not extend to a prisoner unless—

(3) He is in custody in violation of the Constitution or laws or treaties of the United States; or

(5) It is necessary to bring him into court to testify or for trial.

28 U.S.C. §2243. Issuance of writ; return; hearing; decision:

A court, justice or judge entertaining an application for a writ of habeas corpus shall forthwith award the writ or issue an order directing the respondent to show cause why the writ should not be granted,

unless it appears from the application that the applicant or person detained is not entitled thereto.

The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within three days unless for good cause additional time, not exceeding twenty days, is allowed.

The person to whom the writ or order is directed shall make a return certifying the true cause of the detention.

When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.

Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the person detained.

The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.

The return and all suggestions made against it may be amended, by leave of court, before or after being filed.

The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

28 U.S.C. §2251. Stay of State court proceedings:

A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment or discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.

After the granting of such a stay, any such proceeding in any State court or by or under the authority of any State shall be void.

28 U.S.C. §2253. Appeal:

In a habeas corpus proceeding before a circuit or district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit where the proceeding is had.

There shall be no right of appeal from such an order in a proceeding to test the validity of a warrant to remove, to another district or place for commitment or trial, a person charged with a criminal offense against the United States, or to test the validity of his detention pending removal proceedings.

An appeal may not be taken to the court of appeals from the final order in a habeas corpus proceeding where the detention complained of arises out of process issued by a State court, unless the justice or judge who rendered the order or a circuit justice or judge issues a certificate of probable cause.

28 U.S.C. §2201. Creation of remedy:

In case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. §2202. Further relief:

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

Illinois Revised Statutes (1969)

Chap. 38, sec. 108-3. Grounds for Search Warrant:

Upon the written complaint of any person under oath or affirmation which states facts sufficient to

show probable cause and which particularly describes the place or person, or both, to be searched and the things to be seized, any judge may issue a search warrant for the seizure of the following:

(a) Any instruments, articles or things which have been used in the commission of, or which may constitute evidence of, the offense in connection with which the warrant is issued.

(b) Any person who has been kidnapped in violation of the laws of this State, or who has been kidnapped in another jurisdiction and is now concealed within this State or any human fetus or human corpse.

Chap. 38, sec. 108-7. Command of Search Warrant:

The warrant shall command the person directed to execute the same to search the place or person particularly described in the warrant and to seize the instruments, articles or things particularly described in the warrant.

Chap. 38, sec. 108-10. Return to Court of Things Seized:

A return of all instruments, articles or things seized shall be made without unnecessary delay before the judge issuing the warrant or before any judge named in the warrant or before any court of competent jurisdiction. An inventory of any instruments, articles or things seized shall be filed with the return and signed under oath by the officer or person executing the warrant. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the instruments, articles or things were taken and to the applicant for the warrant.

Chap. 38, sec. 109-1. Person Arrested:

(a) A person arrested without a warrant shall be taken without unnecessary delay before the nearest and most accessible judge in that county, and a charge shall be filed. A person arrested on a warrant shall be taken without unnecessary delay before the

judge who issued the warrant or if he is absent or unable to act before the nearest or most accessible judge in the same county.

(b) The judge shall;

(1) Inform the defendant of the charge against him and shall provide him with a copy of the charge.

(2) Advise the defendant of his right to counsel and if indigent shall appoint a public defender or licensed attorney at law of this State to represent him in accordance with the provisions of Section 113-3 of this Code.

(3) Hold a preliminary hearing in those cases where the judge is without jurisdiction to try the offense; and

(4) Admit the defendant to bail in accordance with the provisions of Article 110 of this Code.

Chap. 38, sec. 109-3. Preliminary Examination:

(a) The judge shall hold the defendant to answer to the court having jurisdiction of the offense if from the evidence it appears there is probable cause to believe an offense has been committed by the defendant.

(b) If the defendant waives preliminary examination the judge shall hold him to answer and may, or on the demand of the prosecuting attorney shall, cause the witnesses for the State to be examined. After hearing the testimony if it appears that there is not probable cause to believe the defendant guilty of any offense the judge shall discharge him.

(c) During the examination of any witness or when the defendant is making a statement or testifying the judge may and on the request of the defendant or State shall exclude all other witnesses. He may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(d) If the defendant is held to answer the judge may require any material witness for the State or defendant to enter into a written undertaking to

appear at the trial, and may provide for the forfeiture of a sum certain in the event the witness does not appear at the trial. Any witness who refuses to execute a recognizance may be committed by the judge to the custody of the sheriff until trial or further order of the court having jurisdiction of the cause. Any witness who executes a recognizance and fails to comply with its terms shall, in addition to any forfeiture provided in the recognizance, be subject to the penalty provided in Section 32-10 of the "Criminal Code of 1961", approved July 28, 1961, as heretofore and hereafter amended, for violation of bail bond.

Chap. 38, sec. 111-3. Form of Charge:

(a) A charge shall be in writing and allege the commission of an offense by:

(1) Stating the name of the offense;

(2) Citing the statutory provision alleged to have been violated;

(3) Setting forth the nature and elements of the offense charged;

(4) Stating the time and place of the offense as definitely as can be done; and

(5) Stating the name of the accused, if known, and if not known, designate the accused by any name or description by which he can be identified with reasonable certainty.

(b) An indictment shall be signed by the foreman of the Grand Jury and an information shall be signed by the State's Attorney and sworn to by him or another. A complaint shall be sworn to and signed by the complainant.

Chap. 65, sec. 1:

Be it enacted by the People of the State of Illinois, represented in the General Assembly: That every person imprisoned or otherwise restrained of his liberty, except as herein otherwise provided, may prosecute a writ of habeas corpus in the manner provided in this act, to obtain relief from such imprisonment or restraint, if it prove to be unlawful.

Chap. 65, sec. 2:

Application for the writ shall be made to the court or judge authorized to issue the same, by petition signed by the person for whose relief it is intended, or by some person in his behalf, and verified by affidavit; provided, that such application shall be made to the Supreme Court or to a court of competent jurisdiction of the city or of the county in which the person in whose behalf the application is made, is imprisoned or restrained, or to a court of competent jurisdiction of the city from which said person was sentenced or committed or of the county from which said person was sentenced or committed.